XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.1821 of 2000

APPELLANTS : (IN JAIL)

1. Suklal S/o Vishal Singh Aged about 22 years, R/o Village Silpat P.S. Durgkondal, District Kanker, M.P.

2. Sagnuoo S/o Vanshram aged about 32 years, By occupation Cultivator, Resident of Village Silpat, P.S. Durgkondal, District Kanker, M.P.

VERSUS

RESPONDENT : State of Madhya Pradesh, Through Police Station Durgkondal, District Kanker, M.P.

Present :

Mrs. Kiran Jain, counsel for the appellant.

Mr. Neeraj Mehta, PL for the State/respondent.

ORAL JUDGMENT

(23.08.2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 1st September 1999 passed in Sessions Trial No. 273/97 whereby learned Additional Sessions Judge, Kanker has convicted the appellants under Section

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

376(2)(g) of the IPC and sentenced each of them to undergo R.I. for ten years, pay a fine of Rs. 5,000/- and in default of payment of fine to further undergo R.I. for six months.

2. Case of the prosecution in brief is that on 14.4.1997 at about 10.10 p.m. the prosecutrix came to close the door of her kitchen garden when appellant Sagnoo caught her hand, gagged her mouth and dragged her near his home where he met accused Suklal. Both of them dragged the prosecutrix near a tree, laid her on the ground and after taking out her underwear accused Suklal committed rape on her. The report was lodged by the prosecutrix on 17.4.1997 after return of her parents. The prosecutrix was sent for medical examination to P.H.C, Durgukondal where Dr. Parmeshwarilal (PW-12) examined her and gave her report of Ex.P/9A.

3. After completing investigation charge sheet was filed against the appellants under Section 376(2)(g) of the IPC and the learned trial Court relying upon the statements of the prosecutrix (PW-4) and her father Puturam (PW-5) as also considering the fact that on medical examination of the prosecutrix fresh injuries were found on her private parts, has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the appellant submits that allegation of forcible sexual intercourse is only against appellant Suklal whereas there is no allegation against appellant Sagnoo that he committed rape with the prosecutrix and the only allegation against him is

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that he accompanied Suklal and gagged the prosecutrix by closing her mouth with his hand. She further submits that main accused Suklal has already been released from jail after undergoing the sentence imposed on him and appellant Sagnoo is in jail since the date of judgment i.e. 1st September 1999 till date and he was also in jail during trial from 22.4.1997 to 21.5.1998 and thus, he has already completed nine years of jail sentence and in these circumstances, taking into consideration the role attributed to appellant Sagnoo, the sentence imposed on him may be reduced to the sentence already undergo by him.

5. On the other hand, learned counsel for the State/respondent supports impugned judgment of the trial court. However, he does not dispute that the appellant No.2 Sagnoo has already served nine years' jail sentence till date.

6. I have heard learned counsel for the appellant and perused the impugned judgment as also the evidence on record.

7. The offence has been committed with a prosecutrix aged about 13 years. She has categorically stated that she was dragged from her home to a nearby place where accused Suklal committed sexual intercourse with her, whereas accused Sagnoo actively participated in assisting the accused in committing the rape. The statement of the prosecutrix is corroborated by the statement of her father Puturam (PW-5) who has also stated that after his return his daughter had narrated the incident to her mother, who in turn narrated the same to him. Puturam (PW-5) is also a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

witness of the fact that appellant Sagnoo had confessed before the Panchayat regarding commission of offence. The statements of these witnesses are duly corroborated by the statement of PW-12 Dr. Parmeshwarilal who after examination found fresh injuries over private parts of the prosecutrix. Thus, from the evidence available on record, the offence under Section 376(2)(g) of the IPC against the appellants is established.

8. However, taking into consideration that there is no allegation against appellant No. 2 that he, in fact, committed forcible sexual intercourse with the prosecutrix and also considering that he has already undergone nine years' jail sentence, ends of justice would be served if while maintaining conviction of the appellant No. 2 under Section 376(2)(g) of the IPC, the jail sentence imposed on him is reduced the extent already undergone by him.

9. In the result, the appeal of appellant No. 1 Suklal is dismissed and that of appellant No.2 Sagnoo partly succeeds. His conviction under Section 376(2)(g) of the IPC is maintained. However, sentence imposed on him is reduced from 10 years' R.I. and fine of Rs.5,000/- to the period already undergone by him. He be set at liberty forthwith, if not required in any other case.

Sd/-
Dhirendra Mishra
Judge